

REFERENCE TITLE: dangerous crimes against children; sentencing

State of Arizona
House of Representatives
Forty-ninth Legislature
First Regular Session
2009

HB 2348

Introduced by
Representatives Mason: Goodale, Jones

AN ACT

AMENDING SECTIONS 13-705 AND 13-751, ARIZONA REVISED STATUTES; RELATING TO SENTENCING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-705, Arizona Revised Statutes, is amended to
3 read:

4 13-705. Dangerous crimes against children: sentences:
5 definitions

6 A. A person who is at least eighteen years of age and who is convicted
7 of a dangerous crime against children in the first degree involving sexual
8 assault of a minor who is twelve years of age or younger or sexual conduct
9 with a minor who is twelve years of age or younger shall be sentenced to
10 NATURAL life imprisonment and is not eligible for ~~suspension of sentence,~~
11 ~~probation, pardon~~ COMMUTATION or release from confinement on any basis ~~except~~
12 ~~as specifically authorized by section 31-233, subsection A or B until the~~
13 ~~person has served thirty-five years or the sentence is commuted.~~ This
14 subsection does not apply to masturbatory contact.

15 B. Except as otherwise provided in this section, a person who is at
16 least eighteen years of age or who has been tried as an adult and who is
17 convicted of a dangerous crime against children in the first degree involving
18 attempted first degree murder of a minor who is under twelve years of age,
19 second degree murder of a minor who is under twelve years of age, sexual
20 assault of a minor who is under twelve years of age, sexual conduct with a
21 minor who is under twelve years of age or manufacturing methamphetamine under
22 circumstances that cause physical injury to a minor who is under twelve years
23 of age ~~may~~ SHALL be sentenced to life imprisonment and is not eligible for
24 suspension of sentence, probation, pardon or release from confinement on any
25 basis except as specifically authorized by section 31-233, subsection A or B
26 until the person has served thirty-five years or the sentence is commuted.
27 ~~If a life sentence is not imposed pursuant to this subsection, the person~~
28 ~~shall be sentenced to a term of imprisonment as follows:~~

29 Minimum	Presumptive	Maximum
30 13 years	20 years	27 years

31 C. Except as otherwise provided in this section, a person who is at
32 least eighteen years of age or who has been tried as an adult and who is
33 convicted of a dangerous crime against children in the first degree involving
34 attempted first degree murder of a minor who is twelve, thirteen or fourteen
35 years of age, second degree murder of a minor who is twelve, thirteen or
36 fourteen years of age, sexual assault of a minor who is twelve, thirteen or
37 fourteen years of age, taking a child for the purpose of prostitution, child
38 prostitution, sexual conduct with a minor who is twelve, thirteen or fourteen
39 years of age, continuous sexual abuse of a child, sex trafficking of a minor
40 who is under fifteen years of age or manufacturing methamphetamine under
41 circumstances that cause physical injury to a minor who is twelve, thirteen
42 or fourteen years of age or involving or using minors in drug offenses ~~shall~~
43 MAY be sentenced to LIFE IMPRISONMENT AND IS NOT ELIGIBLE FOR SUSPENSION OF
44 SENTENCE, PROBATION, PARDON OR RELEASE FROM CONFINEMENT ON ANY BASIS EXCEPT
45 AS SPECIFICALLY AUTHORIZED BY SECTION 31-233, SUBSECTION A OR B UNTIL THE

PERSON HAS SERVED THIRTY-FIVE YEARS OR THE SENTENCE IS COMMUTED. IF A LIFE SENTENCE IS NOT IMPOSED PURSUANT TO THIS SUBSECTION, THE PERSON SHALL BE SENTENCED TO a term of imprisonment as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
13 years	20 years	27 years

A person who has been previously convicted of one predicate felony shall be sentenced to a term of imprisonment as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
23 years	30 years	37 years

D. Except as otherwise provided in this section, a person who is at least eighteen years of age or who has been tried as an adult and who is convicted of a dangerous crime against children in the first degree involving aggravated assault, molestation of a child, commercial sexual exploitation of a minor, sexual exploitation of a minor, aggravated luring a minor for sexual exploitation, child abuse or kidnapping shall be sentenced to a term of imprisonment as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
10 13 years	17 20 years	24 27 years

A person who has been previously convicted of one predicate felony shall be sentenced to a term of imprisonment as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
21 23 years	28 30 years	35 37 years

E. Except as otherwise provided in this section, if a person is at least eighteen years of age or has been tried as an adult and is convicted of a dangerous crime against children involving luring a minor for sexual exploitation or unlawful age misrepresentation and is sentenced to a term of imprisonment, The term of imprisonment is as follows and the person is not eligible for release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
5 years	10 years	15 years

A person who has been previously convicted of one predicate felony shall be sentenced to a term of imprisonment as follows and the person is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
8 years	15 years	22 years

F. Except as otherwise provided in this section, if a person is at least eighteen years of age or has been tried as an adult and is convicted of a dangerous crime against children involving sexual abuse or bestiality under

section 13-1411, subsection A, paragraph 2 and is sentenced to a term of imprisonment, the term of imprisonment is as follows and the person is not eligible for release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
2.5 7.5 years	5 10 years	7.5 12.5 years

A person who has been previously convicted of one predicate felony shall be sentenced to a term of imprisonment as follows and the person is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
8 years	15 years	22 years

G. The presumptive sentences prescribed in subsections B, C and D of this section or subsections E and F of this section if the person has previously been convicted of a predicate felony may be increased or decreased pursuant to section 13-701, subsections C, D and E.

H. Except as provided in subsection F of this section, a person who is sentenced for a dangerous crime against children in the first degree pursuant to this section is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served or commuted.

I. A person who is convicted of any dangerous crime against children in the first degree pursuant to subsection C or D of this section and who has been previously convicted of two or more predicate felonies shall be sentenced to life imprisonment and is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the person has served not fewer than thirty-five years or the sentence is commuted.

J. Notwithstanding chapter 10 of this title, a person who is at least eighteen years of age or who has been tried as an adult and who is convicted of a dangerous crime against children in the second degree pursuant to subsection B, C or D of this section is guilty of a class 3 felony and if the person is sentenced to a term of imprisonment, the term of imprisonment is as follows and the person is not eligible for release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the person has served the sentence imposed by the court, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted:

	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
	5 years	10 years	15 years

K. A person who is convicted of any dangerous crime against children in the second degree and who has been previously convicted of one or more predicate felonies is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted.

L. Section 13-704, subsection J and section 13-707, subsection B apply to the determination of prior convictions.

M. The sentence imposed on a person by the court for a dangerous crime against children under subsection D of this section involving child molestation or sexual abuse pursuant to subsection F of this section may be served concurrently with other sentences if the offense involved only one victim. The sentence imposed on a person for any other dangerous crime against children in the first or second degree shall be consecutive to any other sentence imposed on the person at any time, including child molestation and sexual abuse of the same victim.

N. In this section, for purposes of punishment an unborn child shall be treated like a minor who is under twelve years of age.

O. A dangerous crime against children is in the first degree if it is a completed offense and is in the second degree if it is a preparatory offense, except attempted first degree murder is a dangerous crime against children in the first degree.

P. For the purposes of this section:

1. "Dangerous crime against children" means any of the following that is committed against a minor who is under fifteen years of age:

- (a) Second degree murder.
- (b) Aggravated assault resulting in serious physical injury or involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument.
- (c) Sexual assault.
- (d) Molestation of a child.
- (e) Sexual conduct with a minor.
- (f) Commercial sexual exploitation of a minor.
- (g) Sexual exploitation of a minor.
- (h) Child abuse as prescribed in section 13-3623, subsection A, paragraph 1.
- (i) Kidnapping.
- (j) Sexual abuse.
- (k) Taking a child for the purpose of prostitution as prescribed in section 13-3206.
- (l) Child prostitution as prescribed in section 13-3212.
- (m) Involving or using minors in drug offenses.

- 1 (n) Continuous sexual abuse of a child.
- 2 (o) Attempted first degree murder.
- 3 (p) Sex trafficking.
- 4 (q) Manufacturing methamphetamine under circumstances that cause
- 5 physical injury to a minor.
- 6 (r) Bestiality as prescribed in section 13-1411, subsection A,
- 7 paragraph 2.
- 8 (s) Luring a minor for sexual exploitation.
- 9 (t) Aggravated luring a minor for sexual exploitation.
- 10 (u) Unlawful age misrepresentation.

11 2. "Predicate felony" means any felony involving child abuse pursuant
 12 to section 13-3623, subsection A, paragraph 1, a sexual offense, conduct
 13 involving the intentional or knowing infliction of serious physical injury or
 14 the discharge, use or threatening exhibition of a deadly weapon or dangerous
 15 instrument, or a dangerous crime against children in the first or second
 16 degree.

17 Sec. 2. Section 13-751, Arizona Revised Statutes, is amended to read:
 18 13-751. Sentence of death or life imprisonment; aggravating and
 19 mitigating circumstances; definition

20 A. If the state has filed a notice of intent to seek the death penalty
 21 and the defendant is convicted of first degree murder as ~~defined~~ PRESCRIBED
 22 in section 13-1105, the defendant shall be sentenced to death or imprisonment
 23 in the custody of the state department of corrections for life or natural
 24 life as determined and in accordance with the procedures provided in section
 25 13-752. A defendant who is sentenced to natural life is not eligible for
 26 commutation, parole, work furlough, work release or release from confinement
 27 on any basis. If the defendant is sentenced to life, the defendant shall not
 28 be released on any basis until the completion of the service of twenty-five
 29 calendar years if the murdered person was fifteen or more years of age and
 30 thirty-five years if the murdered person was under fifteen years of age or
 31 was an unborn child. In this section, for purposes of punishment an unborn
 32 child shall be treated like a minor who is under twelve years of age.

33 B. At the aggravation phase of the sentencing proceeding that is held
 34 pursuant to section 13-752, the admissibility of information relevant to any
 35 of the aggravating circumstances set forth in subsection F of this section
 36 shall be governed by the rules of evidence applicable to criminal trials.
 37 The burden of establishing the existence of any of the aggravating
 38 circumstances set forth in subsection F of this section is on the
 39 prosecution. The prosecution must prove the existence of the aggravating
 40 circumstances beyond a reasonable doubt.

41 C. At the penalty phase of the sentencing proceeding that is held
 42 pursuant to section 13-752, the prosecution or the defendant may present any
 43 information that is relevant to any of the mitigating circumstances included
 44 in subsection G of this section, regardless of its admissibility under the
 45 rules governing admission of evidence at criminal trials. The burden of

1 establishing the existence of the mitigating circumstances included in
2 subsection G of this section is on the defendant. The defendant must prove
3 the existence of the mitigating circumstances by a preponderance of the
4 evidence. If the trier of fact is a jury, the jurors do not have to agree
5 unanimously that a mitigating circumstance has been proven to exist. Each
6 juror may consider any mitigating circumstance found by that juror in
7 determining the appropriate penalty.

8 D. Evidence that is admitted at the trial and that relates to any
9 aggravating or mitigating circumstances shall be deemed admitted as evidence
10 at a sentencing proceeding if the trier of fact considering that evidence is
11 the same trier of fact that determined the defendant's guilt. The
12 prosecution and the defendant shall be permitted to rebut any information
13 received at the aggravation or penalty phase of the sentencing proceeding and
14 shall be given fair opportunity to present argument as to whether the
15 information is sufficient to establish the existence of any of the
16 circumstances included in subsections F and G of this section.

17 E. In determining whether to impose a sentence of death or life
18 imprisonment, the trier of fact shall take into account the aggravating and
19 mitigating circumstances that have been proven. The trier of fact shall
20 impose a sentence of death if the trier of fact finds one or more of the
21 aggravating circumstances enumerated in subsection F of this section and then
22 determines that there are no mitigating circumstances sufficiently
23 substantial to call for leniency.

24 F. The trier of fact shall consider the following aggravating
25 circumstances in determining whether to impose a sentence of death:

26 1. The defendant has been convicted of another offense in the United
27 States for which under Arizona law a sentence of life imprisonment or death
28 was imposable.

29 2. The defendant has been or was previously convicted of a serious
30 offense, whether preparatory or completed. Convictions for serious offenses
31 committed on the same occasion as the homicide, or not committed on the same
32 occasion but consolidated for trial with the homicide, shall be treated as a
33 serious offense under this paragraph.

34 3. In the commission of the offense the defendant knowingly created a
35 grave risk of death to another person or persons in addition to the person
36 murdered during the commission of the offense.

37 4. The defendant procured the commission of the offense by payment, or
38 promise of payment, of anything of pecuniary value.

39 5. The defendant committed the offense as consideration for the
40 receipt, or in expectation of the receipt, of anything of pecuniary value.

41 6. The defendant committed the offense in an especially heinous, cruel
42 or depraved manner.

43 7. The defendant committed the offense while:

1 (a) In the custody of or on authorized or unauthorized release from
2 the state department of corrections, a law enforcement agency or a county or
3 city jail.

4 (b) On probation for a felony offense.

5 8. The defendant has been convicted of one or more other homicides, as
6 defined in section 13-1101, that were committed during the commission of the
7 offense.

8 9. The defendant was an adult at the time the offense was committed or
9 was tried as an adult and the murdered person was under fifteen years of age,
10 was an unborn child in the womb at any stage of its development or was
11 seventy years of age or older.

12 10. The murdered person was an on duty peace officer who was killed in
13 the course of performing the officer's official duties and the defendant
14 knew, or should have known, that the murdered person was a peace officer.

15 11. The defendant committed the offense with the intent to promote,
16 further or assist the objectives of a criminal street gang or criminal
17 syndicate or to join a criminal street gang or criminal syndicate.

18 12. The defendant committed the offense to prevent a person's
19 cooperation with an official law enforcement investigation, to prevent a
20 person's testimony in a court proceeding, in retaliation for a person's
21 cooperation with an official law enforcement investigation or in retaliation
22 for a person's testimony in a court proceeding.

23 13. The offense was committed in a cold, calculated manner without
24 pretense of moral or legal justification.

25 14. The defendant used a remote stun gun or an authorized remote stun
26 gun in the commission of the offense. For the purposes of this paragraph:

27 (a) "Authorized remote stun gun" means a remote stun gun that has all
28 of the following:

29 (i) An electrical discharge that is less than one hundred thousand
30 volts and less than nine joules of energy per pulse.

31 (ii) A serial or identification number on all projectiles that are
32 discharged from the remote stun gun.

33 (iii) An identification and tracking system that, on deployment of
34 remote electrodes, disperses coded material that is traceable to the
35 purchaser through records that are kept by the manufacturer on all remote
36 stun guns and all individual cartridges sold.

37 (iv) A training program that is offered by the manufacturer.

38 (b) "Remote stun gun" means an electronic device that emits an
39 electrical charge and that is designed and primarily employed to incapacitate
40 a person or animal either through contact with electrodes on the device
41 itself or remotely through wired probes that are attached to the device or
42 through a spark, plasma, ionization or other conductive means emitting from
43 the device.

1 15. THE DEFENDANT COMMITTED THE OFFENSE AGAINST A PERSON WHO WAS UNDER
2 TWELVE YEARS OF AGE AND THE OFFENSE COMMITTED AGAINST THE MURDERED PERSON
3 INVOLVED A VIOLATION OF CHAPTER 14 OR 35.1 OF THIS TITLE.

4 G. The trier of fact shall consider as mitigating circumstances any
5 factors proffered by the defendant or the state that are relevant in
6 determining whether to impose a sentence less than death, including any
7 aspect of the defendant's character, propensities or record and any of the
8 circumstances of the offense, including but not limited to the following:

9 1. The defendant's capacity to appreciate the wrongfulness of his
10 conduct or to conform his conduct to the requirements of law was
11 significantly impaired, but not so impaired as to constitute a defense to
12 prosecution.

13 2. The defendant was under unusual and substantial duress, although
14 not such as to constitute a defense to prosecution.

15 3. The defendant was legally accountable for the conduct of another
16 under section 13-303, but his participation was relatively minor, although
17 not so minor as to constitute a defense to prosecution.

18 4. The defendant could not reasonably have foreseen that his conduct
19 in the course of the commission of the offense for which the defendant was
20 convicted would cause, or would create a grave risk of causing, death to
21 another person.

22 5. The defendant's age.

23 H. For THE purposes of determining whether a conviction of any
24 dangerous crime against children is a serious offense pursuant to this
25 section, an unborn child shall be treated like a minor who is under twelve
26 years of age.

27 I. For the purposes of this section, "serious offense" means any of
28 the following offenses if committed in this state or any offense committed
29 outside this state that if committed in this state would constitute one of
30 the following offenses:

31 1. First degree murder.

32 2. Second degree murder.

33 3. Manslaughter.

34 4. Aggravated assault resulting in serious physical injury or
35 committed by the use, threatened use or exhibition of a deadly weapon or
36 dangerous instrument.

37 5. Sexual assault.

38 6. Any dangerous crime against children.

39 7. Arson of an occupied structure.

40 8. Robbery.

41 9. Burglary in the first degree.

42 10. Kidnapping.

43 11. Sexual conduct with a minor under fifteen years of age.

44 12. Burglary in the second degree.

45 13. Terrorism.